

REMARKS

This Amendment is submitted in reply to the non-final Office Action mailed on December 14, 2005. Claims 1-2, 4-5, 10-12, 14-16 and 19 are pending in this application. Claims 3, 6-9, 13 and 17-18 were previously canceled. In the Office Action, Claims 1-2, 4-5, 10-12, 14-16 and 19 are rejected under 35 U.S.C. §112, second paragraph, Claims 1-2, 4-5, 11-12, 14, 16 and 19 are rejected under 35 U.S.C. §102 and Claims 10 and 15 are rejected under 35 U.S.C. §103. In response Claims 1 and 19 have been amended, and Claim 20 has been added. These amendments do not add new matter. In view of the amendments and/or for the reasons set forth below, Applicants respectfully submit that the rejections should be withdrawn.

In the Office Action, Claims 1-2, 4-5, 10-12, 14-16 and 19 are rejected under 35 U.S.C. §112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter that Applicants regard as their invention. Specifically, the Patent Office alleges that Claim 1 states that the second material has properties to retain the water or beverage in the cartridge under an overpressure of 0.1 to 3 bar is achieved, but then states that the beverage passes through the second material when the overpressure of 0.1 bar is reached. In response, Claim 1 has been amended to address the informalities cited by the Patent Office. The amendment is supported in the specification, for example, at page 3, line 22 to page 4, line 10. Based on at least these noted reasons, Applicants believe that Claims 1-2, 4-5, 10-12, 14-16 and 19 fully comply with 35 U.S.C. §112, second paragraph. Accordingly, Applicants respectfully request that the rejection of Claims 1-2, 4-5, 10-12, 14-16 and 19 under 35 U.S.C. §112 be withdrawn.

In the Office Action, Claims 1-2, 4-5, 11-12, 14, 16 and 19 are rejected under 35 U.S.C. §102(b) as anticipated by U.S. Patent No. 5,897,899 to Fond ("*Fond*"). Applicants respectfully disagree with and traverse this rejection for at least the reasons set forth below.

Applicants have amended independent Claim 1 to include, in part, a sealed cartridge comprising a second sheet material that is selected from the group consisting of filter paper, non-woven fiber material, prescored plastic material and combinations thereof having a sufficiently tight mesh to retain water or beverage in the cartridge until the overpressure is reached and allows the beverage to pass through it by effect of the fluid overpressure alone when the overpressure of between 0.1 to 3 bar is reached, thus resulting in a delay effect in the passage of

the beverage through the second sheet after water has been admitted into the capsule. These amendments as discussed above are fully supported in the specification, for example, at page 2, lines 1-9 and page 2, line 31 to page 3, line 29.

In contrast, *Fond* fails to disclose or suggest every element of the present claims. For example, *Fond* fails to disclose or suggest a capsule with a second sheet made of filter, non-woven fiber or prescored plastic material that allows the beverage to pass through it by effect of the fluid overpressure alone when the overpressure of between 0.1 to 3 bar is reached, thus resulting in a delay effect in the passage of the beverage through the second sheet after water has been admitted into the capsule as required by Claim 1. In other words, *Fond* fails to disclose a capsule with the second sheet material that allows the beverage to pass through it by effect of the fluid pressure alone, for example, when the overpressure of between 0.1 to 3 bar is reached. Instead, *Fond* only teaches a second sheet that is a “tear face” with a character of a foil. See, *Fond*, column 5, lines 49-50. Preference is given to a foil of aluminum or plastic that is impermeable to oxygen. See, *Fond*, column 5, lines 51-52.

Applicants have also amended Claim 1 to recite, in part, that the plastic material for the second material is prescored (see, specification, page 3, lines 22-29). Because of the type of composition used for the second material, the beverage is able to pass through the second material by effect of the fluid overpressure alone. An advantage of the present invention is that a delayed effect is obtained that provides improved extraction properties and better foam properties without requiring an external opening means such as in *Fond*. Further, the sheet material enables a simpler, lower cost capsule to be manufactured.

In contrast, *Fond* teaches a capsule in which the beverage is able to pass only when the lower side is broken or ruptured by external relief means. For example, *Fond* teaches that “materials employed for forming the tear face should be such that, when impinged upon the relief surface element the tear faces, in accordance with the invention, is embodied to withstand a pressure in the interior of the cartridge above 1 bar, and particularly such as a pressure within the range of from 2 bar to 15 bar, prior to breaking and tearing, such providing for the phases of extraction discussed further below.” (emphasis added.) See, *Fond*, column 5, lines 37-44. Because *Fond* teaches a tear face that can withstand pressures up to 15 bar, *Fond* is not concerned with the present invention and actually teaches away from the present claims.

Indeed, *Fond* only teaches a closed cartridge with a bottom foil or cover that is meant to be opened only when contacting and tearing against projections of the holder of the machine. See, *Fond*, column 4, lines 8-15. When the pressure reaches a value of between 2 to 15 bars, the cover is pressed against the projections and it reaches its breaking stress and forms a plurality of openings. See, *Fond*, Claim 1 and column 7, lines 10-25. Consequently, the lower face of the cartridge in *Fond* is not designed to break by effect of the fluid pressure alone when the overpressure of between 0.1 to 3 bar is reached. However, the present claims require, in part, a simpler cartridge that can open by the internal pressure effect of the fluid alone and not by any external opening means.

When considering the presence of paper fibers, *Fond* only mentions the use of a “multi-layer” that combines paper fibers and aluminum. See, *Fond*, column 5, line 61 to column 6, line 23. However, in *Fond*, the layer of paper fibers or non-woven material are not be the tear face but should instead be an additional layer combined with the tear face. This additional layer should keep, as taught by *Fond*, the face integrally intact as the tear face (e.g. aluminum or plastic) tears. Thus, the paper fiber layer in *Fond* has a support and filtering function whereas the second sheet of the present claims has, for example, a retarded or delayed opening function and resists up to a certain pressure before the beverage is released. As a result, *Fond* fails to teach or suggest a second sheet that is made of filter paper, meshed plastic or fiber material that can provide a retarded opening effect before allowing the beverage to pass through as required by Claim 1.

For the reasons discussed above, Applicants respectfully submit that Claim 1 and Claims 2, 4-5, 11-12, 14, 16 and 19 that depend from Claim 1 are novel, nonobvious and distinguishable from the cited reference. Accordingly, Applicants respectfully request that the rejection of Claims 1-2, 4-5, 11-12, 14, 16 and 19 under 35 U.S.C. §102(b) be withdrawn.

Claims 10 and 15 are rejected under 35 U.S.C. §103 as being unpatentable over *Fond* in view of U.S. Patent No. 4,253,385 to Illy (“*Illy*”). Applicants respectfully submit that the patentability of Claim 1 renders moot the obviousness rejection of Claims 10 and 15. In this regard, the cited art fails to teach or suggest the elements of Claims 10 and 15 in combination with the novel elements of Claim 1.

Further, *Illy* fails to cure the deficiency of *Fond* because of the filter sheets of *Illy* are permeable to water at atmospheric pressure. The retarded opening effect cannot be obtained with *Illy*. Therefore, if *Fond* were modified with the filter sheet of *Illy* and the aluminum or plastic tear face of *Fond* removed, the retarded effect would not be obtained because the filter sheet of *Illy* would not be sufficient by itself to retain a pressure inside the capsule.

An advantage of the construction of the present invention is that it considerably reduces the complexity of the capsule because no tear face such as the aluminum or plastic of *Fond* is used while the second material of the present claims can deliver the retarded effect with a rise in pressure in the capsule. Another advantage of the present invention is that there is no more need for external relief/recessed elements that must puncture or rupture the capsule's tear face further simplifying the system.

Accordingly, Applicants respectfully request that the obviousness rejection with respect to Claims 10 and 15 be reconsidered and the rejection be withdrawn.

Applicants further note that Claim 20 has been newly added. The amendment is fully supported in the specification, for example, at page 4, lines 15-26. Applicants respectfully submit that Claim 20 should be allowed.

For the foregoing reasons, Applicants respectfully request reconsideration of the above-identified patent application and earnestly solicit an early allowance of same.

Appl. No. 10/728,342
Reply to Office Action of December 14, 2005

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Dated: March 10, 2006